

HEARST *corporation*

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VIA ECF

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Judge Paul A. Crotty
U.S. District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: ***Kelly-Brown v. Winfrey, 11 Civ. 07875 (PAC) – Expert Deposition***

Dear Judge Crotty:

I write on behalf of Defendants in response to Plaintiffs' letter to the Court from last night, which never should have been sent and follows a pattern of discovery abuse by Plaintiffs. In short, Defendants have agreed to the date proposed by Plaintiffs for the deposition of their expert Robert Wallace even though the date offered falls well outside of Plaintiffs' own schedule and gives Defendants only four days after the deposition to serve their responsive report.

As the Court may recall, the parties could not agree on an expert-discovery schedule. Defendants objected to Plaintiffs ultimate proposal, which gave Defendants less than three weeks to respond to Plaintiffs' reports. Plaintiffs nevertheless chose to wait until after midnight on the date in their own schedule to serve their reports, unilaterally imposing their schedule on Defendants. Plaintiffs then claimed that not a single one of their three designated experts was available during the four-day deposition period specified in their schedule. As to Mr. Wallace, Plaintiffs' main damages expert, Plaintiffs claimed he was not available until March 10, almost two weeks after the deposition period in Plaintiffs' schedule and after Defendants' responsive reports are due. It was only after Defendants pointed out the severe prejudice this would cause that Plaintiffs offered March 3. And then Plaintiffs wrote their letter to the Court two hours after that offer to complain about Defendants' conduct. Defendants have accepted Plaintiffs' date for Mr. Wallace (having little choice), and their proposed dates for the other experts, but Plaintiffs' gamesmanship remains troubling, as does their insistence on burdening the Court unnecessarily.

Respectfully submitted,

/s/ Jonathan R. Donnellan
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cc: Counsel of Record (via ECF)

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